



May 17, 2000

Mr. Stephen L. Crain
Atlas & Hall, L.L.P.
P.O. Box 3725
McAllen, Texas 78502-3725

OR2000-1968

Dear Mr. Crain:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 135353.

The McAllen School District Police Department (the "department"), which you represent, received a request for records relating to an incident involving a student and the requestor on a specified date, including the administration, criminal investigation, and investigators reports, all medical reports, witnesses' affidavits, and any other information regarding the disposition of the incident. You inform us that there is no responsive administration report. You have submitted for our review the department's incident-offense report and other responsive records. You claim that the submitted records contain information that is excepted from disclosure under sections 552.108, 552.114, and 552.131 of the Government Code and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"). We have considered the exceptions you claim and have reviewed the information you submitted.¹

You claim that all responsive information prepared or maintained by the department is excepted from disclosure under section 552.108 of the Act. Section 552.108, the "law enforcement exception," provides as follows:

¹In submitting the responsive records for our review, you have completely obscured information that you claim is excepted from disclosure. A school district may withhold, without seeking an attorney general decision, student names and other identifying information that must be withheld under sections 552.026 and 552.114 of the Act and FERPA. *See* Open Records Decision No. 634 at 5-8 (1995). In the future, you should bracket, underline, or otherwise label other information that the district seeks to withhold, so that this office is able to review that information. *See* Gov't Code §§ 552.301(e)(2), .302.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except [from public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In raising your claim under section 552.108, you generally assert that "[a]ll of the information requested . . . is information that deals with the investigation of crime and constitutes internal records of a law enforcement agency." You also inform us that no arrest has been made. You do not advise us, however, of the status of the department's investigation or provide any other explanation of how or why section 552.108 is applicable to the submitted records. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); *see also* Open Records Decision Nos. 616 at 1 (1993), 216 at 4 (1978). On the basis of your general assertion of a law enforcement interest and our review of the submitted records, we are unable to conclude that these records are excepted from disclosure under section 552.108. *See* Gov't Code § 552.301(e)(1)(A); *see also* Open Records Decision Nos. 434 at 3 (1986) (stating that generalized explanations not addressed to particular records or portions thereof were not a sufficient showing); 216 at 4 (1978) (stating that the Act clearly places the burden on the governmental body to establish how and why a particular exception applies to requested information).

You also claim that the submitted records contain information that must be withheld from disclosure under section 552.114 of the Act and the federal Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. Section 552.114 requires the district to withhold "information in a student record at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). Section 552.026 of the Act provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). For purposes of FERPA, "education records" generally include records, files, documents, and other materials that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See*

20 U.S.C. § 1232g(a)(4)(A); *see also* Open Records Decision No. 634 at 3 (1995). This office generally has treated “student record” information under section 552.114 of the Act as the equivalent of “education record” information that is protected by FERPA. *See* ORD 634 at 5. In this instance, the information that you seek to withhold under section 552.114 and FERPA is contained entirely in the department’s incident-offense report and related law enforcement records. Under FERPA, “[t]he term ‘education records’ does not include . . . records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement[.]” 20 U.S.C. § 1232g(a)(4)(B)(ii); *see also* Open Records Decision No. 612 (1992). Accordingly, the department may not withhold any of the submitted information under section 552.114 of the Government Code or section 552.026 in conjunction with FERPA.

You also claim that the requested records contain information that is excepted from disclosure under section 552.131 of the Act.² As added to chapter 552 of the Government Code by the Seventy-sixth Legislature, section 552.131 provides as follows:

(a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student’s or former student’s name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee’s or former employee’s name; or

(3) if the informer planned, initiated, or participated in the possible violation.

²As of the date of this letter ruling, four different sections of the Act were denominated as section 552.131. The section 552.131 that you raise was added to chapter 552 of the Government Code by the Act of May 30, 1999, 76th Leg., R.S., ch. 1335, § 6, 1999 Tex. Gen. Laws 4543, 4545.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.131. In this instance, the department seeks to withhold information that would reveal the identity of a student who was the victim of an alleged crime. We note, however, that the identity of a crime victim constitutes front-page offense report information that generally is considered to be public. *See* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 187 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976). The identity of the victim of an alleged crime, whether or not that person also is an "informant," may be withheld from disclosure only upon a showing that special circumstances exist. You have not demonstrated the presence of such special circumstances here. We therefore conclude that the department may not withhold information that would identify the student who was the victim of the alleged crime under section 552.131.

In summary, none of the submitted information that the department seeks to withhold is excepted from disclosure under section 552.108 of the Act, sections 552.114 and 552.026 and FERPA, or section 552.131. Therefore, the submitted records must be released. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

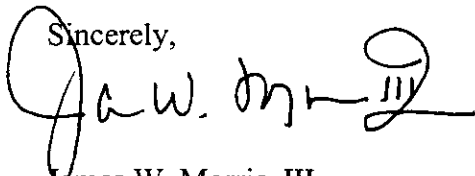
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 135353

Encl. Submitted documents

cc: Mr. Phillip Clark
Brown Middle School
2700 S. Ware Road
McAllen, Texas 78503
(w/o enclosures)